

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CURTIS HERTEL, the Register of Deeds and
Representative of INGHAM COUNTY; and
NANCY HUTCHINS, the Register of Deeds and
Representative of BRANCH COUNTY, both as
Class Representatives of all 83 counties in the
State of Michigan,

Case No. 1:12-cv-00174

Hon. Robert Holmes Bell

Plaintiffs,

v.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; MERSCORP, INC.; JEANNE
KIVI; ELLEN COON; MARSHALL ISAACS;
BANK OF AMERICA N.A.; JP MORGAN
CHASE & CO.; CHASE HOME MORTGAGE
CORPORATION f/k/a CHASE HOME
FINANCE; WELLS FARGO BANK, N.A.;
CITIMORTGAGE INC.; eTITLE AGENCY
INC.; 1ST CHOICE TITLE SERVICES, INC.;
ATTORNEYS TITLE AGENCY LLC, f/k/a
WARRANTY TITLE AGENCY LLC;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; JOHN DOE and any other
authorized signers for MERS or MERSCORP,
INC.; and Defendants JOHN DOE
CORPORATIONS I – MMM,

Defendants,

and

FEDERAL HOUSING FINANCE AGENCY,

Intervener.

**DEFENDANTS ATTORNEYS TITLE AGENCY LLC, JEANNE KIVI,
AND ELLEN COON’S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(6)**

Under Federal Rule of Civil Procedure 12(b)(6) and this Court's Opinion and Order denying remand (Docs ##49-50), Defendants Attorneys Title Agency LLC, Jeanne Kivi, and Ellen Coon (collectively, "Non-Diverse Defendants") move to dismiss the claims against them.

As the Court concluded in its Opinion, Plaintiffs have, as a matter of law, no colorable claim against any of the Non-Diverse Defendants, and Plaintiffs fraudulently joined the Non-Diverse Defendants solely in an effort to defeat the Court's diversity jurisdiction. (Opinion (Doc #49) at 11-19.) The standard applied by the Court to the question of fraudulent joinder was "more lenient" to Plaintiffs' position than the standard under Rule 12(b)(6). *Casias v. Wal-Mart Stores, Inc.*, — F.3d —, 2012 WL 4096153, at *3 (6th Cir. 2012). Thus, Plaintiffs' failure to state a colorable claim against the Non-Diverse Defendants necessarily means that Plaintiffs failed to state a claim upon which relief can be granted against these defendants. *Beavers v. DePuy Orthopaedics, Inc.*, No. 11-dp-20275, 2012 WL 1945603, at *5 (N.D. Ohio May 30, 2012) (finding that the non-diverse defendant was fraudulently joined and, therefore, "dismiss[ing] [that defendant] from this case").

The Non-Diverse Defendants contacted Plaintiffs' counsel on October 8, 2012, to seek concurrence in the relief requested, but such concurrence was not obtained.

Accordingly, the Non-Diverse Defendants ask the Court to dismiss them, with prejudice, from this matter under Rule 12(b)(6).

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: /s/ Nicholas B. Gorga

Nicholas B. Gorga (P72297)

Joseph Aviv (P30014)

Brock A. Swartzle (P58993)

2290 First National Bldg., 660 Woodward Ave.

Detroit, MI 48226-3506

Telephone: (313) 465-7640

Fax: (313) 465-7641

ngorga@honigman.com

javiv@honigman.com

bswartzle@honigman.com

Dated: October 10, 2012

*Attorneys for Defendants Attorneys Title Agency LLC,
Jeanne Kivi, and Ellen Coon*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CURTIS HERTEL, the Register of Deeds and
Representative of INGHAM COUNTY; and
NANCY HUTCHINS, the Register of Deeds and
Representative of BRANCH COUNTY, both as
Class Representatives of all 83 counties in the
State of Michigan,

Case No. 1:12-cv-00174

Hon. Robert Holmes Bell

Plaintiffs,

v.

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.; MERSCORP, INC.; JEANNE
KIVI; ELLEN COON; MARSHALL ISAACS;
BANK OF AMERICA N.A.; JP MORGAN
CHASE & CO.; CHASE HOME MORTGAGE
CORPORATION f/k/a CHASE HOME
FINANCE; WELLS FARGO BANK, N.A.;
CITIMORTGAGE INC.; eTITLE AGENCY
INC.; 1ST CHOICE TITLE SERVICES, INC.;
ATTORNEYS TITLE AGENCY LLC, f/k/a
WARRANTY TITLE AGENCY LLC;
FEDERAL NATIONAL MORTGAGE
ASSOCIATION; JOHN DOE and any other
authorized signers for MERS or MERSCORP,
INC.; and Defendants JOHN DOE
CORPORATIONS I – MMM,

Defendants,

and

FEDERAL HOUSING FINANCE AGENCY,

Intervener.

**BRIEF IN SUPPORT OF DEFENDANTS
ATTORNEYS TITLE AGENCY LLC, JEANNE KIVI, AND
ELLEN COON'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(6)**

STATEMENT OF QUESTION PRESENTED

Should Defendants Attorneys Title Agency LLC, Jeanne Kivi, and Ellen Coon be dismissed, with prejudice, from this matter because the Court previously found that Plaintiffs have no colorable claim against them?

Defendants Attorneys Title Agency LLC, Jeanne Kivi, and Ellen Coon answer: Yes.

For their brief in support of their motion to dismiss, Defendants Attorneys Title Agency LLC, Jeanne Kivi, and Ellen Coon rely upon the authorities and analysis set forth in the accompanying motion.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: /s/ Nicholas B. Gorga

Nicholas B. Gorga (P72297)

Joseph Aviv (P30014)

Brock A. Swartzle (P58993)

2290 First National Bldg., 660 Woodward Ave.

Detroit, MI 48226-3506

Telephone: (313) 465-7640

Fax: (313) 465-7641

ngorga@honigman.com

javiv@honigman.com

bswartzle@honigman.com

Dated: October 10, 2012

*Attorneys for Defendants Attorneys Title Agency LLC,
Jeanne Kivi, and Ellen Coon*

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing documents were electronically filed with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF participants on the 10th day of October, 2012.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By: /s/ Nicholas B. Gorga

Nicholas B. Gorga (P72297)

Joseph Aviv (P30014)

Brock A. Swartzle (P58993)

2290 First National Bldg., 660 Woodward Ave.

Detroit, MI 48226-3506

Telephone: (313) 465-7640

Fax: (313) 465-7641

ngorga@honigman.com

javiv@honigman.com

bswartzle@honigman.com

Dated: October 10, 2012

*Attorneys for Defendants Attorneys Title Agency LLC,
Jeanne Kivi, and Ellen Coon*